Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-1866

WILLIAM C. KORBAR,

Petitioner,

vs.

THOMAS HITE, ALUMINUM WORKERS NEWS, AND LOCAL UNION 3911 UNITED STEELWORKERS OF AMERICA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondents oppose the issue of a writ of certiorari because of the lack of any federal question, substantial or insubstantial. We briefly respond, in corresponding order, to the three points raised in the Petition as alleged reasons for granting the writ.

I.

NO FEDERAL ISSUE IS RAISED BY THE APPLICATION OF THE INNOCENT CONSTRUCTION RULE.

Illinois follows the innocent construction rule. Applying that rule, the Illinois Appellate Court held that the words used in the subject publication were not libelous. (Pp. 4-5) This being a matter of pure state law, no federal question is involved.

II.

NO FEDERAL ISSUE IS RAISED BY THE APPLICATION OF THE PUBLIC FIGURE RULE.

We note initially that the Appellate Court decided the public figure issue as dictum only, having already held that the words in the publication were not libelous under state law. (P. 6) At any rate, the issue was adjudicated as a matter of state, not federal law.

In *Farnsworth* v. *Tribune Co.*, 43 Ill. 2d 286 (1969), the Illinois Supreme Court applied the *New York Times* qualified privilege to all matters of public interest or concern. In so doing, it imposed a limitation upon Illinois libel claims that would not become required under principles of federal law until two years later under *Rosenbloom* v. *Metromedia*, 403 U. S. 29 (1971). In *Farnsworth*, the public figure was an osteopathic physician. Using this approach, other Illinois decisions have applied the privilege with equal liberality. *Doctors Convalescent Center, Inc.* v. *East Shore Newspapers, Inc.*, 104 Ill. App. 2d 271 (1968) (nursing home operator); *Basarich* v. *Rodeghero*, 24 Ill. App. 3d 889 (1974) (high school teachers and athletic coaches). In the instant case, the *Farnsworth* doctrine was applied and the privilege was upheld with respect to the president of a credit unit.

Petitioner does not explain why a federal issue arises when a state court elects to expand a privilege in libel actions. For the State of Illinois could even eliminate libel as a cause of action within its jurisdiction and such would not be a matter of federal concern.

III.

NO FEDERAL ISSUE IS RAISED BY THE FAILURE TO FIND MALICE UNDER STATE LAW.

The Appellate Court held that, the words not being libelous under Illinois law, the holding was dispositive of the malice issue. No federal question is involved in this determination.

CONCLUSION.

New York Times and its progeny were intended to balance the right of free speech against the legitimate use of defamation laws in the states. As this Court stated in *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323 (1974):

> "We would not, of course, invalidate state law simply because we doubt its wisdom, but here we are attempting to reconcile state law with a competing interest grounded in the constitutional command of the First Amendment."

Minimum standards have been established by this Court to guarantee First Amendment protection. So long as that protection is provided, the states are left free to administer their laws. Quoting again from *Gertz*:

> ". . . we conclude that the States should retain substantial latitude in their efforts to enforce a legal remedy for defamatory falsehood injurious to the reputation of a private individual . . . We hold that, as long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual."

Petitioner apparently is contending that Illinois provides more First Amendment protection than is required by the decisions of this Court. He asserts that this constitutes a violation of the Freedom of Speech clause. The rationale of such an argument is difficult to grasp.

Respectfully submitted,

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